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10 Attorneys for Defendants New York Life Insurance
11 Company and New York Life Insurance and
12 Annuity Corporation

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 OLGA ORTMANN, as an individual
16 and on behalf of all others similarly
situated,

17 Plaintiff,

18 v.

19 NEW YORK LIFE INSURANCE
20 COMPANY, a corporation; NEW
YORK LIFE INSURANCE AND
21 ANNUITY CORPORATION, a
corporation; and DOES 1 through 20,
22 inclusive,

23 Defendants.

Case No. 3:07-CV-02506-WHA

**[PROPOSED] ORDER GRANTING
DEFENDANTS' MOTION TO
STRIKE**

[FED. R. CIV. PROC. 12(f)]

Judge: Hon. William Alsup

Date: July 5, 2007

Time: 8:00 a.m.

Courtroom: 9, 19th Floor

On July 5, 2007, Defendants New York Life Insurance Company and New York Life Insurance and Annuity Corporation's ("Defendants") Motion to Strike portions of Plaintiff's Complaint came on for regularly scheduled hearing in Courtroom 9, the Honorable William Alsup presiding. _____ appeared for Defendants and _____ appeared for Plaintiff. Upon consideration of the pleadings, papers, and arguments of counsel, and with good cause shown, it is hereby **ORDERED AND ADJUDGED THAT:**

Defendants' Motion is **GRANTED and;**

The following portions of Plaintiff's Complaint are struck, without leave to amend.

LANGUAGE CONCERNING PUNITIVE AND EXEMPLARY DAMAGES

SECOND CAUSE OF ACTION

1. Paragraph 29, in its entirety:

"Defendants committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiff and members of the Plaintiff Class, from improper motives amounting to malice, and in conscious disregard of Plaintiff's rights and the rights of the Plaintiff Class. Plaintiff and members of the Plaintiff Class are thus entitled to recover nominal, actual, compensatory, punitive, and exemplary damages in amounts according to proof a time of trial, but in amounts in excess of the minimum jurisdiction of this Court."

THIRD CAUSE OF ACTION

2. Paragraph 36, in its entirety:

“Defendants committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiff and members of the Plaintiff Class, from improper motives amounting to malice, and in conscious disregard of Plaintiff’s rights and the rights of the Plaintiff Class. Plaintiff and members of the Plaintiff Class are thus entitled to recover nominal, actual, compensatory, punitive, and exemplary damages in amounts according to proof a time of trial, but in amounts in excess of the minimum jurisdiction of this Court.”

FOURTH CAUSE OF ACTION

3. Paragraph 43, in its entirety:

“Defendants committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiff and members of the Plaintiff Class, from improper motives amounting to malice, and in conscious disregard of Plaintiff’s rights and the rights of the members of the Plaintiff Class. Plaintiff and members of the Plaintiff Class are thus entitled to recover nominal, actual, compensatory, punitive, and exemplary damages in amounts according to proof at time of trial, but in amounts in excess of the minimum jurisdiction of this Court.”

PRAYER FOR RELIEF

4. Prayer for Relief, paragraph 13, page 24, line 25, in its entirety: “For punitive and exemplary damages.”

**CERTAIN LANGUAGE CONCERNING A FOUR YEAR STATUTE OF
LIMITATIONS**

SECOND CAUSE OF ACTION

5. Paragraph 27, page 11, lines 14 through 15 “during the four (4) years preceding the filing of the Complaint.”

THIRD CAUSE OF ACTION

6. Paragraph 34, page 13, lines 6 through 7: “during the four (4) years preceding the filing of this Complaint.”

FOURTH CAUSE OF ACTION

7. Paragraph 41, page 15, lines 1 through 3: “During the four (4) years preceding the filing of this Complaint.”

**LANGUAGE CONCERNING PENALTIES PURSUANT TO SECTION 558
OF THE CALIFORNIA LABOR CODE**

FIFTH CAUSE OF ACTION

8. Paragraph 48, page 16, lines 21 through 22: “Additionally, Plaintiff and members of the Plaintiff Class are entitled to penalties under *Labor Code* § 558.

**LANGUAGE CONCERNING CLAIMS FOR DISGORGEMENT THAT
CANNOT BE BROUGHT UNDER THE UNFAIR COMPETITION LAW**

TWELFTH CAUSE OF ACTION

9. Paragraph 85, page 23, lines 21 through 22, the words: “and profits to be disgorged from defendants.”

PRAYER FOR RELIEF

10. Paragraph 4, page 24, line 5, the words: “and disgorged profits from the unlawful business practices of defendants.”

IT IS SO ORDERED.

Dated:

By: United States District Court Judge

RESPECTFULLY SUBMITTED BY:

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